

STATE OF MICHIGAN
COURT OF APPEALS

COLT MEADOWS HOMEOWNERS
ASSOCIATION, TIMOTHY SELFRIDGE,
KAREN EVANS, MICHAEL HOST, PATRICIA
HOST, REGINA ROOT, THOMAS BARGER,
and DIANE BARGER,

UNPUBLISHED
November 1, 2002

Plaintiffs-Appellees,

v

ELIJAH BLACK and JOHNNIE M. BLACK,

No. 231742
Eaton Circuit Court
LC No. 99-001221-CH

Defendants-Appellants.

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting plaintiffs' motion to enter a settlement agreement and denying defendants' motion to set aside the settlement agreement. We affirm.

In 1986, defendant purchased a home in the Colt Meadows Subdivision, and, as was required, became members of the Colt Meadows Homeowners Association. Under the association's bylaws, a homeowner must receive approval from the association's board to make any exterior changes to the property. On July 5, 1999, Elijah Black requested in writing that a new storage shed be built in his backyard to replace the existing shed. The association approved the request with the understanding that the old shed would be removed. Defendants then requested verbally that they be able to keep the old shed, but that request was denied by the association. Later, defendants joined both sheds into one building.

On September 8, 1999, defendants began to pour a concrete driveway from the road to the shed, although they had not received association approval to do this. Board president Timothy Selfridge called Elijah Black and told him that construction should stop because the driveway was unauthorized. Mr. Black attempted to explain that the driveway was needed for his 99-year-old mother who used a wheelchair, and for himself because he was retired with a work-related back disability and had a state-issued handicap parking permit. According to Mr. Black, Selfridge stated that even if the Blacks requested an approval, it would not be granted by

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

the board.

On September 23, 1999, plaintiffs filed a complaint to enforce the declarations of restrictions, that is, to remove the concrete driveway, patio, and old shed. Defendants countered by filing a discrimination claim with the Department of Housing and Urban Development. On January 28, 2000, defendants requested from the board that they be permitted to build two handicap ramps at the rear of the property. Plaintiffs did not respond to the request, but instead sought a temporary restraining order (TRO), contending that building the ramps would irreversibly alter the circumstances of the case and preclude disposition of the merits of their complaint. On March 2, 2000, the trial court granted the request for the TRO.

The parties subsequently entered into settlement negotiations, with the proposed settlement agreement placed on the record on May 8, 2000, essentially releasing both actions, setting aside the TRO, and permitting a ramp to be built. Additionally, the patio would remain and the concrete driveway would remain until the death of Mr. Black's mother, at which time the driveway would be reduced from its exiting twelve-foot width to a six-foot width. The old shed was also to be removed. After a few unsuccessful attempts to reduce the terms of the settlement agreement to writing and have the trial court enter the agreement, the parties appeared in court on December 8, 2000. Plaintiffs requested that the settlement agreement, which had been drafted by defendant's first counsel, be entered, while defendants requested that the settlement agreement be set aside. Defendants new counsel argued that plaintiffs had acted unconscionably by seeking to enjoin construction of the handicap ramp before deciding whether to grant or deny defendants' request to build the ramp and by then using the TRO to force the settlement agreement.

The trial court, however, characterized the matter as whether there was an enforceable agreement. The trial court noted that the settlement agreement was made after considerable negotiation and time to reflect; defendants had previously accepted the agreement; the agreement had been drafted by defendants' counsel; and there was no fraud, mistake, or unconscionable advantage to justify setting aside the agreement. Defendants now appeal from the trial court's entry of the settlement agreement, maintaining that the issuance of the TRO forced them to accept the settlement agreement.

Defendants first challenge the trial court's decision to issue the TRO. The trial court's decision to issue the TRO, however, is moot because the settlement agreement permitted defendants to build the handicap ramp and defendants have recently moved from the home.

Defendants next challenge the entry of the settlement agreement, arguing that it should be set aside because it was (1) the result of an unconscionable advantage due to the issuance of the injunction, (2) the product of mistake, and (3) contingent on the construction of the ramp, a condition that would not occur. The trial court's decision to enter the settlement agreement is reviewed for an abuse of discretion. *Howard v Howard*, 134 Mich App 391, 396-397; 352 NW2d 280 (1984).

The parties here memorialized their agreement in open court on May 8, 2000, and, as evidenced by the record, defendants clearly agreed to the terms of the agreement that was stated

on the record by their counsel. Consequently, the settlement agreement is binding. MCR 2.507(H); *Mikonczyk v Detroit Newspapers, Inc.*, 238 Mich App 347, 349; 605 NW2d 360 (1999). The settlement agreement is a contract and is construed and applied under general contract principles. *Michigan Mutual Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001), quoting *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). A party is bound by the settlement agreement absent a showing of duress, mistake, fraud, or unconscionable advantage. *Massachusetts Indemnity and Life Ins Co v Thomas*, 206 Mich App 265, 268; 520 NW2d 708 (1994); *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989); *Michigan National Bank of Detroit v Patmon*, 119 Mich App 772, 778; 327 NW2d 355 (1982).

Defendants argue that the settlement agreement should be set aside because the agreement is the result of plaintiffs' unconscionable advantage in obtaining the TRO that prohibited defendants from building the ramp and, thus, forced them to give up their civil rights claim. First, the TRO did not outright prohibit building a handicapper ramp anywhere on the property, but stated that defendants were restrained from building ramps in the rear of the property that were "in any way connected to, have contact with or utilize in any way any of the subjects of the instant litigation . . . including concrete walkway/patio, shed and concrete driveway." Second, the mere fact that the trial court ruled in favor of plaintiffs with respect to the TRO does not compel a finding of unconscionability on behalf of plaintiffs. The record simply does not support defendants' claim in this regard because the May 8, 2000, hearing transcript indicates that defendants were in full accord with the settlement agreement as stated on the record by their own counsel. The record shows that defendants knowingly and voluntarily entered into the settlement agreement; there is no indication of any unconscionable advantage undertaken by plaintiffs.

Similarly, we find no support for defendants' claim of mistake. Defendants' argument in this regard is that the trial court made certain rulings that were incorrect during the course of proceedings. However, it is clear that a settlement agreement may be set aside if there is a mistake by a party with respect to the execution of the agreement, not any alleged mistake by the court. *Lenawee Co Bd of Mental Health v Messerly*, 417 Mich 17, 24; 331 NW2d 203 (1982). There is no showing that the parties were mistaken as to any terms of the settlement agreement, therefore, there is no basis to set aside the agreement because of mistake.

Lastly, defendants argue that the settlement agreement should be set aside because it was contingent upon them building a ramp and such contingency never occurred. As plaintiffs argue, the contingency referred to the parties' remedial responsibilities once the ramp was built. In other words, defendants' failure to build the ramp would merely relieve the parties of their future, remedial responsibilities; it would not serve to void the settlement agreement itself.

Accordingly, the trial court did not abuse its discretion in entering the settlement agreement.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof